

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**VERA V. ROLAND**

Claimant

VS.

**U.S.D. NO 259**

Respondent

Self-Insured

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Docket No. 169,654

**ORDER**

Claimant requested Appeals Board review of an Award entered by Special Administrative Law Judge Michael T. Harris on March 4, 1997. The Appeals Board heard oral argument on September 3, 1997.

**APPEARANCES**

Timothy J. King of Wichita, Kansas, appeared for claimant. Robert G. Martin of Wichita, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The Appeals Board reviewed the record and considered the stipulations listed in the March 4, 1997, Award by Special Administrative Law Judge Michael T. Harris. In addition, the Appeals Board considered the record and stipulations listed in the original Award entered February 1, 1994, by Special Administrative Law Judge William F. Morrissey.

**ISSUE**

The sole issue raised by claimant in her Application for Review is the Special Administrative Law Judge's denial of compensation on Review and Modification.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the record and considered the briefs and arguments of the parties, the Appeals Board finds that the Award by the Special Administrative Law Judge should be affirmed.

This case has a long history. To summarize, claimant was injured at work on May 29, 1991, while picking up a box of books weighing 30 to 40 pounds. Claimant reported feeling pain in her low back and left leg. She was treated by board-certified orthopedic surgeon, Robert L. Eyster, M.D., who, on September 10, 1991, released claimant to return to work without restrictions. Dr. Eyster found the accident did not result in any permanent impairment of function. She subsequently treated with other physicians. The record contains other medical opinions from other physicians both supporting and contradicting Dr. Eyster's assessment. On February 1, 1994, Special Administrative Law Judge Morrissey entered an award for a 45 percent work disability. That decision was appealed to the Workers Compensation Appeals Board which, on September 13, 1994, entered an Order reversing the Special Administrative Law Judge. The Appeals Board found claimant had not met her burden of proving she suffered permanent impairment as a result of the work-related accident. Claimant was awarded temporary total disability and medical compensation but was denied permanent partial disability benefits. Future medical benefits were awarded only upon application to and approval by the Director. Claimant appealed to the Kansas Court of Appeals under Case No. 94-72749-A. Claimant subsequently dismissed that appeal.

Thereafter, claimant filed an Application for Preliminary Hearing seeking post-award medical treatment for psychological problems. An Order dated July 27, 1995, was entered by Administrative Law Judge Nelsonna Potts Barnes, granting claimant's request for psychological counseling. That Order was appealed to the Appeals Board. By Order of October 26, 1995, the Appeals Board dismissed that appeal finding it did not give rise to a jurisdictional issue. Eventually, a final order was entered on claimant's post-award application which is the subject of this appeal. Special Administrative Law Judge Harris entered his Award on March 4, 1997, denying compensation. Special Administrative Law Judge Harris concluded:

"1. The Claimant has failed to meet her burden of proof in showing more probably than not that a change of circumstances has occurred, related to the accidental injury herein, and that she is entitled to additional compensation. It appears from the weight of the evidence, that the Claimant's psychological problems are not directly related to the injury."

Claimant neither sought nor did she begin receiving psychological counseling until a year after the February 1, 1994, Award by the Special Administrative Law Judge. Therefore, the record before the Special Administrative Law Judge and, thereafter, before the Appeals Board on appeal from the original Award did not contain any mention of

psychological injury. At that time claimant was not requesting benefits in the form of psychological counseling. Consequently, neither the Special Administrative Law Judge nor the Appeals Board addressed any issue concerning psychological trauma or injury as a part of the original award in this claim. Claimant began treating with psychologist Charles W. Alexander, Ph.D., in February 1995. That treatment was later authorized by a post-award preliminary hearing Order entered by the Administrative Law Judge on July 27, 1995.

The issue now presented is whether claimant's present condition for which she is receiving counseling arose out of and in the course of her employment. Stated another way, it is whether the alleged traumatic neurosis or emotional problem is directly traceable to the work-related injury. This is one of the elements necessary to be proven before a traumatic neurosis condition can be found compensable. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557 rev. denied (1989). Claimant went nearly four years without alleging any work-related psychological problems. Respondent argues that claimant's attempt to link her alleged psychological problems to her back injury is an attempt to circumvent the Appeals Board's previous ruling that claimant had sustained no permanent partial disability. This argument also presents a question as to whether the Appeals Board's prior finding of no permanent impairment is res judicata to the present claim for psychological injury. However, claimant alleges that her psychological condition did not develop until after the denial of her claim for permanent partial disability benefits based upon her physical injury.

The Kansas Supreme Court found in the case of Berger v. Hahner, Foreman & Cale, Inc., 211 Kan. 541, 506 P.2d 1175 (1973), that a new and distinct injury will be compensable if it is "a direct and natural result of the primary injury." 211 Kan. at 545. The Court, in Berger, also stated that:

"Even though this court has long held that traumatic neurosis is compensable; we are fully aware that great care should be exercised in granting an award for such injury owing to the nebulous characteristics of a neurosis. An employee who predicates a claim for temporary or permanent disability upon neurosis induced by trauma, either scheduled or otherwise, bears the burden of proving by a preponderance of the evidence that the neurosis exists and that it was caused by an accident arising out of and during the course of his employment." 211 Kan. at 550.

On the question of causation and whether the psychological condition is directly traceable to the physical injury, the Appeals Board finds the testimony of Dr. Marc Quillen to be persuasive. He explains that, although claimant may relate her problems to the work injury, the 1991 accident is not a causative factor. Family circumstances and personal stressors are the primary factors in claimant's condition. Claimant has focused upon the work injury to explain or as her way of dealing with those unrelated problems, most of

which preexisted the accident at work. Claimant's mental or emotional disorders are not directly traceable to the employment with respondent.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge, dated should be, and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Timothy J. King, Wichita, KS  
Robert G. Martin, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director